

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60772

FILE: B-185798

DATE: April 19, 1976

MATTER OF: C&S Construction Company, Joint Venture

99049

DIGEST:

Cover letter accompanying protester's bid instructing agency to "deduct from each labor unit 70%" was reasonably evaluated by contracting officer, who applied deduction only to prices identified in IFB Schedule as "Unit Labor" and not to items which included both labor and material costs in undisclosed proportions.

This protest questions the reasonableness of the contracting officer's evaluation of a cover letter attached to the protester's bid submitted in response to solicitation No. H51-065-X-1000-6-28 issued by the Department of the Interior, Bureau of Indian Affairs.

The solicitation invited bids for the construction of new electrical transmission and distribution facilities, the modification of certain existing facilities and the conversion of existing lines from 2400 to 7200/12470 volts. The work was divided into tasks identified as "Construction Units" and "Removal Units". The contractor is to be paid for each unit of work performed at the price stated in his bid.

For the most part, the IFB's "Unit Price Schedule" requested bidders to state "Unit Material" and "Unit Labor" prices for the construction items. One example is Item 2 - Poles:

"Furnish and install a pole unit, set in place, backfilled and tamped, in either new construction or in an existing line.

Pole Unit H-C	No. Required	Unit Material	Unit Labor	Extended Labor & Material
35' - 2	23	\$ _____	\$ _____	\$ _____
*	*	*	*	*
Item 2 - Total Price				\$ _____"

However, the "Removal Units" were generally stated as follows:

"Item 3 - Conductors

"The conductor removal unit covers the removal of 1000 feet of conductor or cable and reeling or coiling it in a way that it can be reused, and delivering the coils or reels to the Owner's storage area.

Conductor Unit	Quantity 1000'	Unit Price	Extended Price
*	*	*	*
#1/0 ACSR	58	_____	_____
*	*	*	*
Item 3 - Total Price			\$ _____"

Attached to the top of the protester's bid was a letter signed by the joint venture's partner who executed all other bid forms. The text of the letter, in its entirety, was:

"Deduct from each labor unit 70%."

In evaluating the protester's bid, the contracting officer reduced all construction "Unit Labor" items by 70 percent. Thus evaluated, the protester's bid was not low. The protester contends that its bid was erroneously evaluated, since the protester's intent was that the labor component of the "Removal Units" also should be reduced by 70 percent. Its intent should have been clear, the protester argues, since the removal work consisted solely of labor and did not involve the furnishing of material. In this connection, the protester points to Special Paragraph 5 of the specifications, entitled "Removal Assembly Units", which provides as follows:

"5.1 Removal assembly units cover the furnishing of all labor for the removal of existing units of construction from existing lines, labor for dis-assembly, and transportation for the returning of all materials to the Owners storage areas. All materials removed will remain the property of the Owner.

"5.2 The unit prices include all materials and labor required to reinstall in accordance with the specifications any conductor temporarily detached. The contractor will reinstall at his own expense any other units removed by him for his own convenience.

"5.3 It is intended for all removal items to be included in the removal units in the Bid Schedule or covered under the basic General Conditions cost unit."

It is the protester's position that its bid would be low if the 70 percent reduction were applied as it intended.

Although the agency concedes that the removal tasks are predominantly labor, it points out that some material costs are also included. For example, we are advised that with regard to Item 3 of the removal work (quoted above):

"* * * the contractor is given the option of either coiling or reeling the conductors before transporting the coiled or reeled wire to the owner's storage area. It is not unreasonable to assume that a contractor would reel the larger diameter conductor [described in Item 3] totaling some 58,000 feet in length. The most practical way to roll this size conductor is to place it on reels, which the contractor would have to furnish. This rationale can also be applied to the smaller conductors because of the large quantities involved. Thus, even though there is the appearance that no materials are involved in the removal items, there are, in varying amounts, some which could be substantial."

Under these circumstances, the agency states, it could not identify the actual labor charges to which to apply the deduction, other than to prices specifically broken out in the IFB Schedule as "Unit Labor."

It is our opinion that the protester's instructions to "deduct from each labor unit 70%" created an ambiguity in its bid with regard to the removal unit items. In similar situations, we have held that a bidder should not be allowed to explain his meaning when he is in a position to prejudice other bidders by clarifying his bids after bids have been exposed. See, e.g., Rix Industries, B-184603,

B-185798

March 31, 1976, 76-1 CPD _____. In the instant case, acceptance or rejection of the protester's explanation of his bid determines whether or not the protester is the low bidder. We believe that to accept the clarification would serve to undermine the integrity of the competitive bidding system, which should not be permitted simply in order to obtain a lower price. 40 Comp. Gen. 393, 397 (1961).

In view of the above, the bid submitted by the protester was reasonably evaluated by the contracting officer, and C&S's protest is denied.

R. J. K. M.
Deputy Comptroller General
of the United States